

Law

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

Eileen McCoy,
Michael Canney,
Robert A. Perez,
Parem Birenbaum,
Wallace Howard,
Shawna Doran, and
The Fair Election Initiative of Florida,
Inc.

Case Number: 01-06 CA 001590

Plaintiffs,

v.

City of Alachua, Florida, ✓
Board of Canvassers of the
City of Alachua, Florida, ✓
Jean Calderwood, Chairman, Board of Canvassers
of the City of Alachua, Florida, ✓
Clovis Watson, Member, Board of Canvassers
of the City of Alachua, Florida, ✓
Rosanne Morse, Member, Board of Canvassers
of the City of Alachua, Florida, and
Alan Henderson, Deputy City Clerk and
Supervisor of Elections of the City
of Alachua, Florida.

Defendants.

FILED
OK 87
2006 JUN 16 PM 1:30
CLERK OF COURT
ALACHUA COUNTY FL

AMENDED COMPLAINT FOR CONTEST OF ELECTION

Pursuant to §102.168 Fla. Stat., Plaintiffs sue Defendants to challenge the election for city commission conducted in the City of Alachua, Florida on Tuesday, April 11, 2006. Plaintiffs seek an order invalidating said election and



ordering a new election.

Jurisdiction

1. This Court has jurisdiction of this action pursuant to Article V § 5 Florida Constitution and §102.168(1) Fla. Stat.

Parties

2. Plaintiff Eileen McCoy is a resident, citizen, qualified elector and taxpayer of the City of Alachua, Florida, and has been at all times material hereto.
3. Plaintiff Michael Canney is a resident, citizen, qualified elector and taxpayer of the City of Alachua, Florida, and has been at all times material hereto. Canney is also Co-chair, Alachua County Green Party, and spokesman, Green Party of Florida.
4. Plaintiff Robert A. Perez is a resident, citizen, qualified elector and taxpayer of the City of Alachua, Florida, and has been at all times material hereto.
5. Plaintiff Parem Birenbaum is a resident, citizen, qualified elector and taxpayer of the City of Alachua, Florida, and has been at all times material hereto.

6. Plaintiff Wallace Howard is a resident, citizen, qualified elector and taxpayer of the City of Alachua, Florida, and has been at all times material hereto.
7. Plaintiff Shawna Doran is a resident, citizen, qualified elector and taxpayer of the City of Alachua, Florida, and has been at all times material hereto.
8. Plaintiff The Fair Election Initiative of Florida, Inc. is a Florida not-for-profit corporation committed to fair elections in Alachua County and the City of Alachua whose membership includes one or more electors and taxpayers of the City of Alachua.
9. Defendant, City of Alachua, Florida is a municipality created under the laws of Florida and located in Alachua County, Florida. The City of Alachua is hereinafter designated "City."
10. Defendant, Board of Canvassers of the City of Alachua, Florida, is created by City of Alachua Ordinance O-03-11 §14. This defendant is hereinafter designated as "Canvassers." Canvassers' official address is City of Alachua, 14823 Main Street, Alachua, Fl. 32615.
11. Defendant Jean Calderwood, as member of Canvassers, is the chairman

of Canvassers. Her official address is City of Alachua, 14823 Main Street, Alachua, Fl. 32615.

12. Defendant Clovis Watson, as a member of Canvassers, is a member of Canvassers. His official address is City of Alachua, 14823 Main Street, Alachua, Fl. 32615.
13. Defendant Rosanne Morse, as a member of Canvassers, is a member of Canvassers. Her official address is City of Alachua, 14823 Main Street, Alachua, Fl. 32615.
14. Defendant Alan Henderson, as deputy city clerk and supervisor of elections, is the deputy city clerk and supervisor of elections for City. His official address is City of Alachua, 14823 Main Street, Alachua, Fl. 32615.

Factual Allegations

15. Defendant Jean Calderwood is also the Mayor of City.
16. Defendant Clovis Watson is also City Manager of City.
17. City conducted an election for the office of city commissioner on April 11, 2006. This election is hereinafter designated "Election."
18. Two candidates qualified for Election: Lewis M. Irby and James A.

Lewis.

19. Election is governed by City's charter, City's Ordinance No. O-03-11, and the Florida Election Code, chapters 97 through 106 Florida Statutes.
20. Pursuant to Section 17, Ordinance No. O-03-11, the general law of Florida on the subject of elections applies to and governs Election insofar as there is no conflict with the provisions of O-03-11 or City's Charter.
21. Pursuant to Section 3.1 of City's charter, City's City Commission is the sole judge of the election and qualification of its members. City's City Commission is hereinafter designated "City Commission."
22. Pursuant to Section 5.04 of City's charter, City Commission is the judge of the election and qualification of its members subject to judicial review.
23. Pursuant to §102.168 Fla. Stat. City's election may be contested by filing a complaint with the clerk of the circuit court within 10 days after midnight of the date the last board responsible for certifying the results officially certifies the results of the election being contested.
24. §102.168 Fla. Stat. applies to Election.

25. Pursuant to Sections 3.1 and 5.04 of City's Charter, City Commission as sole judge of the election and qualification of its members is the last board to certify Election pursuant to §102.168(2) Fla. Stat.
26. City Commission did not consider and took no action of any kind on certifying Election prior to a meeting of City Commission on May 15, 2006.
27. Canvassers met on the evening of April 11, 2006 to count ballots.
28. On April 11, 2006 Canvassers also prepared a report of Election to be submitted to City Commission.
29. Canvassers's report was submitted to City Commission on the consent agenda of City Commission's May 15, 2006 meeting.
30. The report referred to in the previous paragraph indicated that candidate James A. Lewis received a total of 652 votes including absentee ballots and Lewis M. Irby received a total of 634 votes including absentee ballots.
31. The report referred to in the previous paragraph provided no entry in spaces provided for provisional ballots.
32. The report indicated in the preceding paragraph showed a margin of 18

votes between the two candidates in favor of James A. Lewis including absentee ballots.

33. Without the absentee ballots, Canvassers' report showed Lewis M. Irby received 593 votes and James A. Lewis received 584 votes, indicating a margin of 9 votes in favor of Lewis M. Irby.
34. The report indicated in the foregoing paragraphs showed Canvassers included a total of 107 absentee ballots in the final vote count for Election.
35. Officials of the City of Alachua conducted the absentee ballot portion of Election.
36. Under §101.041 Fla. Stat. "In all elections held on any subject which may be submitted to a vote, and for all or any state, county, district, or municipal officers, the voting shall be by secret, official ballot printed and distributed as provided by this code, and no vote shall be received or counted in any election, except as prescribed by this code."
37. Under the Florida election code, §101.64. Fla. Stat., a valid absentee ballot must be delivered to an elector as follows: "(1) The supervisor shall enclose with each absentee ballot two envelopes: a secrecy

envelope, into which the absent elector shall enclose his or her marked ballot; and a mailing envelope, into which the absent elector shall then place the secrecy envelope, which shall be addressed to the supervisor.....”

38. In conducting Election, City’s supervisor of elections did not enclose a secrecy envelope with each absentee ballot provided electors.
39. Instead, in conducting Election, City’s supervisor of elections provided some absentee voters an “Absentee Ballot Secrecy Folder” that was always open on at least three sides and did not sea.
40. In conducting Election, City’s supervisor of elections provided one or more absentee voters only a mailing envelope and ballot and provided no secrecy envelope and provided no “Absentee Ballot Secrecy Folder.”
41. Those absent voters referred to in the preceding paragraph who were provided no “Absentee Ballot Secrecy Folder” were provided no written voting instructions.
42. Under the Florida election code, §101.65 Fla. Stat., an absentee voter must be told *inter alia* “4. Place your marked ballot in the enclosed secrecy envelope. 5. Insert the secrecy envelope into the enclosed

mailing envelope which is addressed to the supervisor.”

43. In conducting Election, City’s officials did not instruct absentee voters to place marked ballots in a secrecy envelope and did not instruct absentee voters to place the secrecy envelope in the mailing envelope.
44. Instead, in conducting Election, City’s officials provided instructions to some absentee voters to place marked ballots into “this folder” and to “put the folder and ballot into the return envelope” and provided some absentee voters no instruction on this point.
45. Under the Florida election code, §101.67 Fla. Stat., defendant Henderson had the duty to safely keep in his office any envelopes received containing marked ballots of absent electors.
46. Throughout the election, defendant Henderson kept voted and returned absentee ballots in an unlocked box in his office.
47. Henderson sometimes left the unlocked box in his office unattended by himself or a staff member while one or more campaigning citizens were present in the room with the unattended unlocked box.
48. Under the Florida election code, §102.031 Fla. Stat., no person may solicit votes or distribute campaign material within 100 feet of any

polling place or polling room

49. During Election, defendant Henderson had in his possession in his office wherein absentee ballots were voted campaign materials for candidate James A. Lewis that were in the open sight of the public including absentee voters.
50. Henderson used or distributed the materials described in the preceding paragraph for the purpose of soliciting votes for candidate James A. Lewis.
51. Under the Florida election code, §102.141 Fla. Stat., any member of a canvassing board who is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed shall be replaced.
52. Canvassing Board member Calderwood actively participated in the campaign of candidate James A. Lewis, was not replaced and participated in the canvas of Election in violation of §102.141 Fla. Stat.
53. Canvassing Board member Watson actively participated in the campaign of candidate James A. Lewis, was not replaced and participated in the canvas of Election in violation of §102.141 Fla. Stat.

54. The actions of Canvassers taken on April 11, 2006 were ultra vires and of no effect.
55. Under the Florida election code, § 101.68 Fla. Stat., Canvassers must canvass absentee ballots in this manner: “(2)(d).... The mailing envelopes shall be opened and the secrecy envelopes shall be mixed so as to make it impossible to determine which secrecy envelope came out of which signed mailing envelope; however, in any county in which an electronic or electromechanical voting system is used, the ballots may be sorted by ballot styles and the mailing envelopes may be opened and the secrecy envelopes mixed separately for each ballot style.”
56. In canvassing the absentee ballots on April 11, 2006, Canvassers did not open the mailing envelopes and extract secrecy envelopes from them because there were no secrecy envelopes.
57. Instead, in canvassing the absentee ballots on April 11, 2006, Canvassers or their staff opened the mailing envelopes and removed the folders, which were open on three sides with the ballots therein.
58. In canvassing the absentee ballots on April 11, 2006, Canvassers did not mix the secrecy envelopes containing secured and sealed absentee

ballots so as to make it impossible to determine which secrecy envelope came out of which signed mailing envelope, because there were no secrecy envelopes.

59. In canvassing the absentee ballots on April 11, 2006, Canvassers did not retrieve the “folders” from the mailing envelopes and attempt to mix the “folders” to make it impossible determine which ballot came out of which “folder.”
60. In canvassing the absentee ballots on April 11, 2006, Canvassers or its staff opened each mailing envelope one-by-one, extracted each folder and ballot directly from the mailing envelope one-by-one, placed each mailing envelope on the table one-by-one in manner that made the name of the elector visible to all persons present, and read aloud the content of each ballot one-by-one as it was retrieved from the folder.
61. In canvassing the absentee ballots on April 11, 2006, Canvassers opened a number of absentee ballot mailing envelopes that contained only a ballot and no secrecy envelope and no folder.
62. Canvassers counted ballots that were not enclosed in a secrecy envelope and not enclosed in a folder.

63. The number of ballots described in the preceding paragraph Canvassers counted exceeded the difference in the vote counts reported for the two candidates.
64. Members of the public were present and observed this invalid and non-secret canvassing process.
65. Canvassers, members of City's staff and members of public could identify which candidate some or all of the absentee electors voted for and could associate each vote with an identified elector.
66. None of the absentee ballots was distributed and returned as prescribed by the Florida election code and under §101.041 Fla. Stat. none could be lawfully received or counted by Canvassers.
67. None of the absentee ballots was canvassed as prescribed by the Florida election code §101.041 Fla. Stat. and none could be lawfully received or counted by Canvassers.
68. All of the absentee ballots canvassed by Canvassers and reported to City Commission were received and counted in violation of §101.041 Fla. Stat. and are void.
69. The number of void absentee ballots counted by Canvasser and reported

to City Commission is greater than the difference in the reported number of votes Canvassers reported for each of the two candidates.

70. Officials of City permitted and encouraged voters to vote by absentee ballot at City's City Hall prior to April 11, 2006 including on Monday, April 10, 2006, the day before Election, and on Tuesday, April 11, 2006, the official date of Election.
71. Pursuant to §101.62 Fla. Stat., Defendant Henderson was required to comply with these procedures: "(3) For each request for an absentee ballot received, the supervisor shall record the date the request was made, the date the absentee ballot was delivered to the voter or the voter's designee or the date the absentee ballot was delivered to the post office or other carrier, the date the ballot was received by the supervisor, and such other information he or she may deem necessary."
72. Defendant Henderson did not maintain the records required §101.62 Fla. Stat. but created a retrospective set of records after April 11, 2006.
73. Defendant Henderson's retrospective records referred to above are incorrect.
74. Under the Florida election code, §§101.5613 and 102.141 Fla. Stat.,

Canvassers are responsible that an audit of all voted ballots, all absentee ballots, all provisional ballots, all spoiled ballots, and all unused ballots provided by the supervisor to voting precincts.

75. In particular, the Florida election code, §101.68(b) Fla. Stat., required Canvassers to complete this procedure: “(b) To ensure that all absentee ballots to be counted by the canvassing board are accounted for, the canvassing board shall compare the number of ballots in its possession with the number of requests for ballots received to be counted according to the supervisor's file or list.”
76. Defendant Henderson did not provide Canvassers a file or list on or before April 11, 2006 and Canvassers have not yet completed the canvass as required by §101.68(b) Fla. Stat. and other portions of the Florida Election Code.
77. Canvassers did not conduct an audit to account for all provisional and unused ballots.
78. Under the Florida election code, §101.048 Fla. Stat., a voter whose status to vote is challenged has a right to vote a provisional ballot.
79. A number of electors voted provisional ballots in Election.

80. Under the Florida election code, §102.141(2) Fla. Stat., Canvassers were under a duty to canvas all provisional ballots voted in Election.
81. Canvassers did not canvas the provisional ballots voted in Election and thus disenfranchised those provisional voters.
82. The report Canvassers provided City Commission for action in its meeting of May 15, 2006 was incomplete, did not comply with the Florida Election Code, and was not a legal canvas of Election.
83. Defendant Henderson, acting as City's election official, suggested to one or more voters that they consider the fact that one of the voters (James A. Lewis) had much experience and the other (Lewis M. Irby) none as a factor in deciding for whom to vote.
84. Defendant Clovis Watson, acting as a city official in City's City Hall, suggested to at least one voter that the voter vote an absentee ballot for James A. Lewis.
85. This voter voted for Lewis M. Irby.
86. After this voter voted, Defendant Clovis Watson asked if the voter had voted for the second candidate on the ballot, referring to James A. Lewis.

87. The voter replied that the voter had voted for the first candidate on the ballot, referring to Lewis M. Irby.
88. Defendant Clovis Watson then suggested that the voter voted for the wrong Lewis and that she should change the vote to James A. Lewis.
89. Defendant Henderson then tore up the first ballot this voter cast and the voter voted again, this time for James A. Lewis.
90. Under the Florida election code, §104.0515(3) Fla. Stat., “ No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or not to vote as that person may choose, or for the purpose of causing such other person to vote for, or not vote for, any candidate for any office at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.”
91. Defendant Clovis Watson and other City officials imposed undue influence in favor of James A. Lewis on a number of other voters in a similar or different manner.

92. Defendant Clovis Watson and other City officials harassed and intimidated voters who were supporting candidate Lewis M. Irby.
93. Under the Florida Election Code, §102.101 Fla. Stat., “No sheriff, deputy sheriff, police officer, or other officer of the law shall be allowed within the polling place without permission from the clerk or a majority of the inspectors, except to cast his or her ballot.”
94. Defendant Watson is also City’s sworn police commissioner with the powers to arrest.
95. Defendant Watson was present in and around the City’s polling place where electors were casting absentee votes during Election.
96. Canvassers counted absentee ballots that are excluded under the Florida Election Code and thus defrauded City’s electorate in its report of Election to City Commission.
97. Canvassers did not canvass the provisional ballots voted in Election and thus disenfranchised the provisional voters and defrauded City’s electorate in its report of the election results to the City Commission.
98. The result of the forgoing improper activities was to corrupt the process and invalidate the election

99. The number of corrupted, illegal and improper ballots is greater than the difference in the reported number of votes Canvassers reported for each of the two candidates.
100. Defendants conducted Election in a manner that denied voters the right of secret ballot guaranteed by Article VI §1 Florida Constitution and the Florida election code §101.04 Fla. Stat.
101. Defendants conducted Election in a manner that denied voters the right of to have their votes accurately counted guaranteed by the Florida election code §101.031(2) Fla. Stat.
102. Defendants conducted Election in a manner that denied voters the right to be free of coercion or intimidation by elections officers or any other person guaranteed by the Florida election code §§101.031(2) and 104.0515(3) Fla. Stat.
103. On May 15, 2006 City's City Commission certified the election by adopting the report filed by Canvasser's as an item on a consent agenda.
104. Had City conducted Election properly and without corruption Lewis M. Irby would have won Election.
105. Had City canvassed Election properly and excluded all illegal absentee

ballots Lewis M. Irby would have won Election.

WHEREFORE, Plaintiffs demand relief as follows:

A. an order invalidating Canvasser's report to City Commission as ultra vires, incomplete, erroneous, fraudulent and invalid under the Florida Election Code.

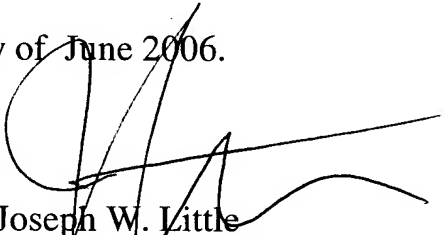
B. an order invalidating Election as corrupt and invalid and invalidate any action taken by City Commission to seat James A. Lewis for another term.

C. an order to defendants to conduct a new election.

D. an order granting plaintiffs costs and attorneys' fees.

CERTIFICATE OF SERVICE

I certify that a copy of this amended complaint was mailed by US mail or hand delivered to Marian B. Rush, Esq., Attorney for Defendants, 726 N.E. First Street, Gainesville, Fl. 32601, on the 16th day of June 2006.



Joseph W. Little
Florida Bar No. 196749
Attorney for Plaintiffs
3731 N.W. 13th Place
Gainesville, Florida 2605
352-273-0660

O:\Projects\AlaEI\Am2Comp606.016